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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/511,381      | 10/14/2004  | Steven M Kessel      | 205332-9011-01      | 2105             |

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MICHAEL BEST & FRIEDRICH LLP  
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EXAMINER

QUINN, COLLEEN M

ART UNIT PAPER NUMBER

3634

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 02/28/2007 | PAPER         |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

|                              |                                      |                                      |  |
|------------------------------|--------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/511,381 | <b>Applicant(s)</b><br>KESSEL ET AL. |  |
|                              | <b>Examiner</b><br>Colleen M. Quinn  | <b>Art Unit</b><br>3634              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This Final Office Action is in response to amendments filed December 1<sup>st</sup>, 2006, in which claims 1, 9, 18, 20-22, 24-31, 33 and 40 were amended and claim 19 was cancelled.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Wende (US 3,184,068). Wende discloses first and second support posts (1,2), a plurality of first (22) and second (22') connectors, extending laterally from the respective posts (Figures 2 and 3), the connectors being pins (23,23', 24,24') that extend through (Figures 2 and 3) apertures (3,4) in the posts, a cantilevered shelf supported in a cantilevered fashion at the rear end of the shelf (Figure 1), releasably attached to the connectors and adjustable in height, the shelf comprising, a first side bracket (5), a second side bracket (6), at least one cross member (25-28) and the side brackets comprising a flange (11), wherein a portion extends across at least part of the front of the posts (Figure 1).

Claims 18, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Weider (US 3,561,608). Weider discloses a post (15) comprising a front, rear, and

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opposing first and second sides (Figure 3), a plurality of connecting pins (45: 47,49,51) welded to the post (Specification, column 3, lines 54-61), with pins (51) extending laterally through the first side of the post to the second via apertures (23).

Claims 9-17 and 22-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Trubiano (US 4,592,286). Trubiano discloses a first and second post (12), where the posts each have a front, rear and two side faces (Figure 1), a plurality of connectors (13), extending laterally from at least one of the sides of each post (Figure 1 & 3), the connectors being pins (14,14'), that connect with shelf connectors (surrounding pins 14 in apertures 20,21), to support a cantilevered shelf (11) in a cantilevered fashion solely at the rear end of the shelf, via brackets (17) and flange (19), the shelf extending across at least part of the front of the first post to front of the second post (Figure 1), abutting the surfaces of each post (Figure 1), a second shelf (11'), with second brackets and flanges, identical to the first set (figure 4), attached via connectors (13), extending from the post at either the same height in the opposite direction (using additional connector 25), or at a new height in either the same direction or opposite direction of the first shelf (Specification, column 2, lines 55-65). The shelving structures are assembled by selecting brackets (17, shelves (11,11'), pin connectors (14,14'), posts (12) and shelving heights, and attaching the pins to the brackets at a desired heights on the posts.

Claim 33, 38 and 39-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Lazarus (US 5,655,740). Lazarus discloses first and second posts (50) with front, rear and opposing first and second sides (Figures 5A-C), a plurality of fastening

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locations (18), through which connecting pins (35) extend through, from one opposing side to another (Figure 5C), first and second cantilevered shelves (52, Figures 6A-6D) with brackets (16), providing the cantilevered attachment solely at the rear end of the shelf, and flange (33), the brackets connecting to the pins, and also though flanges (Figures 6A-C) the shelves being arranged laterally adjacent, stacked, or on opposing sides of the posts or, in any combination thereof (Figures 5A-C and Figure 7), wherein the shelf extends across a portion of the front of the posts (Figure 3B), and wherein the support post has a corner and the shelf extends around the corner (Figure 2D), the shelf flange releasable with opposing sides of the post (Figures 5B-C, 6A-C). The shelving structures are assembled by selecting brackets (16), shelves (52,32,36), pin connectors (35,51), posts (50) and shelving heights (Figure 7) and attaching the pins to the brackets at a desired heights on the posts.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wende as applied to claims 1-3 and 5-6 above, and further in view of Ovitz (4,197,950). Wende fails to disclose a base with legs supporting the posts as well as a covering on the shelf. Ovitz teaches a base (76) supporting the posts (10, 12), with leg supports (74)

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at the ends of the base, stabilizing the structure once assembled as well as a covering (30) on each shelf (14,16) creating a display surface. Therefore, to one of ordinary skill in the art, it would have been obvious to provide the structure of Wende with the base supports and shelf coverings, as taught by Ovitz, to stabilize the structure while assembling and in use as well as providing a display surface.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wende as applied to claims 1-3 and 5-6 above, and further in view of Weider, as advanced above. Ovitz fails to disclose welding the connectors to their respective posts. Weider teaches welding the connectors to their respective posts, adding stability to the structure. Therefore, to one of ordinary skill in the art, it would have been obvious to affix the connectors of Wende, by welding, as taught by Weider, to provide stability for the load bearing shelves.

### ***Response to Arguments***

Applicant's arguments filed December 1<sup>st</sup>, 2006 have been fully considered but they are not persuasive.

Regarding the applicant's arguments directed toward Wende (US 3,184,068), Lazarus (US 5,655,740) and Trubiano (US 4,592,286) the examiner disagrees with the applicant's argument that the shelves of Wende, Lazarus and Trubiano are not supported in a "cantilevered fashion solely at one end" of the shelf. The broad recitation that the shelves are supported in a "*cantilevered fashion*" allows for some variety and

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adjustment in the manner in which the shelves are cantilevered. Wende, Lazarus and Trubiano, as disclosed above, each teach shelves that are cantilevered in their own fashion, wherein each of the shelves are attached to respective support posts wherein the posts are located at the rear end of the shelves, and hence the shelves are cantilevered from an attachment point at the rear end of the shelves.

The applicant additionally argues that the bridge plate of Trubiano is not capable of supporting a cantilevered shelf. The examiner would like to point out to the applicant that the invention of Trubiano is in fact intended to support a shelf (column 2, lines 55-65) and notably it is intended to support a shelf in a cantilevered fashion from the rear end of the shelf, as can best be seen in Figure 1.

The applicant argues that the shelving system of Weider (US 3,561,608) is of different form and function than of the applicant's claimed invention. The examiner recognizes that the shelving system of Weider has some structural differences than the instant application, however the examiner would like to note that because of the broad structural limitations in the applicant's claims that Weider does indeed anticipate the instant application. Though the structure of Weider may appear, at first glance, different than that of the applicant's, it does disclose all the key features and structural limitations, including that the connectors and pin supports are welded to the posts (weld connection between 47 and 49) and the connectors engage the shelves (Figure 5).

Lastly, the applicant argues that Lazarus (US 5,655,740) does not present a shelving system that has an abutting relationship between the shelves and support posts. In figures 1D and A it is clear that Lazarus discloses the shelves to abut the

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support posts. The shelves and flanges can be seen to be in contact and hence, are in an abutting relationship.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Colleen M. Quinn whose telephone number is (571) 272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (571) 272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CMQ  
2/21/07

  
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